



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: WAC 02 238 54702

Office: CALIFORNIA SERVICE CENTER Date:

FEB 27 2003

IN RE: Petitioner:
Beneficiary:



Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a motion picture production company. The beneficiary is an actor. The petitioner seeks O-1 classification of the beneficiary as an alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act) in order to employ him for one year.

The petitioner seeks to employ the beneficiary for one year to promote the motion picture entitled "Nicholas Nickleby."

The director denied the petition, finding that the petitioner sought to change the beneficiary's employment and extend his stay. The director found that the petitioner sought O-1 classification for the beneficiary in order to employ the beneficiary primarily to engage in promotional activity, rather than to continue to complete the same events or activities as specified in the original petition. The director determined that the regulations require that any promotional activity must be incidental to the event or events.

On appeal, counsel for the petitioner provides additional documentation including an updated itinerary outlining the beneficiary's promotional activities and post-production services that include voice over work and filming additional scenes to be used in the DVD edition of the motion picture.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The beneficiary is a native and citizen of the United Kingdom. The record indicates that the beneficiary is an internationally known actor who has achieved international acclaim by virtue of his performance in television and motion picture productions.

The director and counsel for the petitioner characterized the instant petition as a request for an extension on a previously approved petition for O-1 classification. An extension of O-1 classification is appropriate when the employer, employment, and event remain the same. 8 C.F.R. § 214.2(o)(11). In this case, the petitioner, MGM Pictures, Inc., is not the same employer as the original petitioner. A review of the file indicates that the beneficiary has been previously sponsored by Belleville

Productions, Inc., Paramount Pictures, and DreamWorks Television. Given that a new petitioner has filed the instant petition, this matter will be treated as an original petition, rather than as an extension of a previously approved petition.

Under 8 C.F.R. § 214.2(o)(3)(v), in order to qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

(1) Evidence that the alien has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements;

(2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;

(3) Evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

(5) Evidence that the alien has received significant recognition for achievements from organizations, critics, governmental agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a

form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

(6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

(C) If the criteria in paragraph (o)(3)(v) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Here, there is no evidence that the beneficiary has been nominated for, or has been the recipient of significant awards equivalent to those listed at 8 C.F.R. § 214.2(o)(3)(iv)(A) above. Nonetheless, the beneficiary has performed as a lead or starring participant in productions or events that have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases and publications. The beneficiary has achieved national and international recognition for his achievements and has a record of major commercial or critically acclaimed successes. The beneficiary has performed lead or starring roles in the following television and motion picture productions: "Young Americans" (Warner Bros.); "Queer as Folk," (British Broadcasting Corporation, hereinafter BBC); "Queer as Folk 2" (BBC); "Whatever Happened to Harold Smith?" (October Films); "My Wonderful Life" (Granada Television); "Microsoap" (BBC/The Disney Channel); [REDACTED] (BBC); and [REDACTED] (petitioner MGM).

In review, the record shows that the beneficiary meets at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). His recognition is "substantially above that ordinarily encountered" in the motion picture and television industry.

At issue is whether the petitioner has established that the beneficiary is coming to the United States to perform services relating to an event or events.

8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

Event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stop-overs which are incidental and/or related to the event. A group of related activities may also be considered to

be an event. In the case of an O-1 athlete, the event could be the alien's contract.

After a careful review of the entire record, it is concluded that the petitioner has shown that the beneficiary is coming to the United States to perform services relating to an event. The event is described in the contract between the petitioner and beneficiary and in a memorandum titled "deal memo." The petitioner seeks to employ the beneficiary to perform services including post-production services and promotional activity related to the movie [REDACTED]. The petitioner seeks to hire the beneficiary to appear on various television programs to promote the film and its DVD release.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has met that burden.

ORDER: The appeal is sustained.